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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,360	07/17/2002	Joachim Zimmer	10191/2281	7846
26646	7590	11/23/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			GRAHAM, GARY K	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,360

Applicant(s)

ZIMMER, JOACHIM

Examiner

Gary K Graham

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23-44 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 23-26, 28-37, 40-42 and 44 is/are rejected.
- 7) ☒ Claim(s) 27, 37-39 and 43 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference numeral 14.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the projection on the air guide element for guiding the wiper blade must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 37 is objected to because of the following informalities: In claim 37, line 2, use of "element includes is borne" appears grammatically incorrect. Use of ---element is borne--- would appear more appropriate. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 34 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There appears no particular discussion of a projection on the air guide element for guiding the wiper blade. It is not clear where such a projection would be or how it would interact with the wiper blade. Clarification is requested.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 25 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 25, line 2, use of "the limb" is confusing since two limbs have been set forth in claim 23. Which limb is being referenced?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 23, 24, 28, 30-32, 36, 40, 42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamadai et al (US patent 3,673,631).

The patent to Yamadai discloses the invention as is claimed, including an elongated essentially U-shaped profile part (14a, fig.4) which is considered to form a "wiper arm" which is mountable in a driving fashion and configured to couple to a wiper blade (17a). The U-shaped

profile part includes a front limb (23g, fig. 12), a rear limb (22g), a back (area between the limbs, but not numbered), a plurality of air outlet openings (24g) in an area spanning the rear limb and back, and at least one downwardly angled air guide element (29) arranged in an interior area of the U-shaped profile part. Note that the front limb (23g) forms a spoiler, at least as far as defined.

With respect to claim 32 and the air guide element being injection molded, such relates to the particular method of manufacture of the air guide element and does not act to distinguish it from Yamadai. Absent the method of manufacture imparting some structural difference to the element that would differentiate it from Yamadai, such does not act to define over the element of Yamadai.

With respect to claims 42 and 44, note that there are two lower air guide elements (19) which are “borne” by the wiper blade element (17a) and “work together” with the upper air guide element (14a or 29).

Claims 36, 37, 42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Smithers (US patent 3,088,155).

The patent to Smithers discloses the invention as is claimed, including an essentially U-shaped profile part (2, fig.2) for coupling with a wiper blade (12) and an air guide element (10) arranged in an inner area of the essentially U-shaped profile part. Note that the air guide element (10) is “borne” by the wiper blade (12) via strips (14).

With respect to claim 42, note that blade element (12) has a blade back (14) which bears a plurality of lower air guide elements (26) along the longitudinal extension of the wiper blade which are configured to "work together with" upper air guide element (2) arranged on wiper arm (7).

Claims 23, 25, 28, 29, 30, 32, 35, 36, 37, 40, 42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee (US patent 6,108,857).

The patent to Lee discloses the invention, a wiper device, as is claimed, including a U-shaped profiled part (11) which is considered to be a wiper arm, as far as defined. The profiled part is configured to couple with a wiper blade (13) and includes a front limb (11A), rear limb (11C) and back (11B). The back includes a plurality of air outlet openings (24), while the front limb is arranged to form a spoiler (19) pointing in a forward direction of the vehicle. A plurality of air guide elements (29) are arranged in an interior area of the U-shaped profiled part.

With respect to claim 25, note that a plane formed by an edge of the rear limb will pass through the air guide element (29). Thus, the air guide element protrudes beyond the plane as claimed.

With respect to claims 29 and 35, note figure 4, wherein it can be seen that air passing under the spoiler (19) must be accelerated to pass through the spaces (22) formed between the air guide elements (29) and the rubber sheet as such spaces are clearly of a reduced dimension with respect to the space between the lip (19') and the rubber sheet.

With respect to claim 32 and the air guide element being injection molded, such relates to the particular method of manufacture of the air guide element and does not act to distinguish it from Lee. Absent the method of manufacture imparting some structural difference to the element that would differentiate it from Lee, such does not act to define over the element of Lee.

With respect to claim 37, the air guide element is considered to be "borne" by the wiper blade, at least as such defines any particular structure.

With respect to claim 42, note wiper blade element (13) which has a back (16) which is considered to "bear" the lower guide elements (29) that "works together" with an upper air guide element (19) arranged on wiper arm (11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamadai et al (US patent 3,673,631).

The patent to Yamadai discloses all of the above recited subject matter with the exception of the air guide element being clipped or glued to the profiled part.

While Yamadai discloses the air guide element as formed with the profiled part, to make such separate and then attach it to the profiled part would have been an obvious variant of Yamadai. The mere fact that a given structure is integral does not preclude its consisting of various elements. It appears that the unity of diversity of parts would depend more upon the choice of the manufacturer, and the convenience and availability of the machines and tools necessary to construct the profiled part, than on any inventive concept. It would have been obvious to one of skill in the art to make the profiled part of Yamadai of numerous parts assembled together, instead of a single part, as a mere choice of mechanical manufacture.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smithers (US patent 3,088,155) in view of Benson (US patent 3,854,161).

The patent to Smithers discloses all of the above recited subject matter with the exception of nozzles for exiting cleaning fluid being provided in an area of the rear limb of the U-shaped profile part.

The patent to Benson discloses providing nozzles (37) for exiting cleaning fluid in an area of a rear limb of the U-shaped profile parts (18,19).

It would have been obvious to one of skill in the art to provide the U-shaped profile part of Smithers with nozzles thereon in an area of the rear limb, as clearly suggested by Benson, to enable wetting of the windshield during wiping to aid in cleaning.

Allowable Subject Matter

Claim 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 27, 38, 39 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Gary K. Graham', is written over a horizontal line.

Gary K Graham
Primary Examiner
Art Unit 1744